IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.3559 OF 2005

Yerala Medical Trust & Research Centre & Anr. ...Petitioners.
Versus
The State of Maharashtra & Ors. ...Respondents.

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Mr.S. G. Aney with Mr. S. G. Surana for the Petitioners.
Mr. P. M. Patil, AGP for Respondent Nos.1 and 2.
Ms.Beena Menon for Respondent Nos. 3 and 4.
Mr. S. S. Pakale for Dental Council of India.

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CORAM : A. P. SHAH AND
DR. D.Y. CHANDRACHUD, JJ.

June 30, 2005.

ORAL JUDGMENT (PER DR. D.Y. CHANDRACHUD, J.):

The First Petitioner is a Public Charitable Trust registered under the Bombay Public Trusts Act, 1950, set up inter alia, with the object of conducting educational institutions. The Trust conducts

Medical Colleges at Navi Mumbai in the Homoeopathic, Ayurvedic and Dental Sciences. The Homoeopathic Medical College was established in 1989 and about 500 students are pursuing their education for the BHMS Degree Course. The Ayurvedic Medical College has been conducted since 1992 and 200 students are pursuing their education in that College. The Dental College has been conducted since 2000 with the permission of the Dental Council of India and 500 students are enrolled therein. The Homoeopathic College has 40 employees in the teaching staff and 45 in the non-teaching staff. The Ayurvedic College has 36 persons in the teaching staff and 40 in the non-teaching staff, while the Dental College has 90 persons in the teaching staff and 75 in the non-teaching staff. The Court has been informed that the Homoeopathic Medical College has been recognised by the Central Council for Homoeopathy (CCH) while the Ayurvedic Medical College is recognised by the Central Council for Indian Medicine (CCIM).

2. The land on which these Medical Colleges have been

established, has been allotted by the City and Industrial Development Corporation of Maharashtra Ltd. (CIDCO). The Petitioners sought permission from CIDCO to established a new College for conducting Management Courses. On 10th September 2004, CIDCO communicated its approval to the Petitioners to run several new courses, including a course in Business Management on the aforesaid land, bearing Plot Nos.16, 16A and 18 at Sector 4, Kharghar, Navi Mumbai. CIDCO stipulated that the other terms and conditions of the agreement under which the land was leased would continue. Thereafter, an application was submitted to the All India Council for Technical Education (AICTE) for its approval to the establishment of an institution for conducting Post Graduate Courses in Management commencing from Academic Year 2005-06. A copy of CIDCO's permission dated 10th September 2004 was forwarded to AICTE together with an Architect's certificate stipulating that the area available for an MBA degree College comprised of 47,000 sq.ft., in a constructed building consisting of a ground floor and three floors. The Government of Maharashtra by its letter dated 28th January 2005

communicated its approval to AICTE. The Petitioners were called for hearing before the Hearing Committee of AICTE by a communication dated 10th January 2005. Following upon the hearing, a Letter of Intent was issued to the Petitioner by AICTE on 10th February 2005. On 11th April 2005, AICTE addressed a letter to the Petitioner withdrawing the Letter of Intent on the ground that on verification of the land documents, it had been found that the land proposed for the new Management College had been allotted by CIDCO only for setting up Ayurvedic, Homoeopathic and Dental Colleges. The land, according to the AICTE, could not be used for any other purpose under the conditions of lease. AICTE, therefore, withdrew the Letter of Intent on the ground that its requirement of having adequate land' admeasuring 0.5 acres exclusively dedicated for the purpose of the MBA degree Programme was not fulfilled.

3. On 25th April 2005, the Petitioner wrote to AICTE pointing out that the Land Use Certificate issued by CIDCO, which had been included as a part of the proposal, seemed to have been inadvertently

overlooked by AICTE though it was verified by the Regional Office and by the Hearing Committee. The Petitioners stated that of the land that has been allotted to the Trust at Section 4, Kharghar, Navi Mumbai, the Dental College was in occupation of 5 acres which is in accordance with the requirement of the Dental Council. The Homoeopathic College is regulated by the Central Council for Homoeopathy which has not laid down any specific requirement in relation to the area of land. Similar was stated to be the case in regard to the Ayurvedic College which was under the control of the Central Council for Indian Medicine. In these circumstances, the Petitioners reiterated that the College of Management did have 0.5 acres of land which met the norms of AICTE. A copy of an Architect' s Certificate in relation to the actual utilisation of the land in accordance with norms was furnished to AICTE.

4. The Petitioners submitted a further representation on 25th April 2005 recording that all the relevant copies of the site and building plans duly approved by CIDCO had been submitted to

AICTE and requested that the withdrawal of the Letter of Intent be reconsidered. In a representation dated 26th April 2005, the Petitioners recorded that the Trust had invested a sum of Rs.3 crores for the Management College; the building as well as all infrastructural and instructional facilities were ready; the teaching and non-teaching staff had either been identified or appointed and the Trust had created all required amenities including a Hostel. The Petitioners enclosed a copy of the Land Use Certificate dated 10th September 2004 issued by CIDCO in support of their submission that CIDCO had duly authorised the use by the Petitioners of a portion of the land for the Management Institution. A further representation was submitted on 6th May 2005. These representations not having received any response from AICTE, this petition was moved under Article 226 of the Constitution.

5. In support of the petition, it has been urged before us that the ground on which the Letter of Intent is sought to be cancelled is ex-facie erroneous. The Petitioners, it was urged, submitted

together with their proposal, a Land Use Certificate dated 11th September 2004 issued by CIDCO authorising the Petitioners to start the Management Institution, and an Architect' sCertificate certifying that the constructed area of 46,000 sq.ft., was available in a separate building exclusively earmarked for the management College consisting of a ground and three floors. The Hearing Committee had issued a Letter of Intent only upon being satisfied that all the requirements had been met. In these circumstances, it was urged that a cancellation of the Letter of Intent after the Institution had completed the entire infrastructural and other requirements and had expended an amount of Rs.3 crores was arbitrary. In the petition it has been submitted that of the total land admeasuring 7.1 acres in the possession of the Petitioners, 5 acres has been earmarked for the Dental College and Hostel exclusively, one acre for the Ayurvedic and Homoeopathic Colleges and 0.5 acres for the proposed Management College. That according to the Petitioners, would still leave a balance of 0.6 acres. It has been submitted that the monthly expenditure which is required to be undertaken by the Petitioners is in

the amount of Rs. 1.75 lakhs and the entire investment is liable to be wasted if the Letter of Intent is withdrawn on the specious ground that CIDCO had not authorised the use of the land for the Management College when the admitted facts show that there is an authorisation from CIDCO.

6. An affidavit in reply has been filed in these proceedings by the Regional Officer in the Western Region for AICTE. It has been stated therein that AICTE has specific norms and requirements for land and in a Metropolitan City, an institution conducting a management programme must have 0.5 acres of land which must exclusively be available for the proposed institution. This land, it has been submitted, must be demarcated by a boundary wall or fencing. According to AICTE, under the conditions of the lease that was executed by CIDCO, the land could be utilised only by the Ayurvedic, Homoeopathic and Dental Colleges. Though CIDCO issued a Land Use Certificate, it had not been specifically mentioned that an area of 0.5 acres would be exclusively available for the Management

Institution. Furthermore, it has been submitted that the Homoeopathic and Ayurvedic Colleges are respectively under the regulatory control of CCH and CCIM and there was no authentic material or document in regard to the requirement which was stipulated by these Councils for the respective colleges under their control. Hence, it was submitted that it was appropriate that the other Councils should be heard in these proceedings This has again been reiterated in a supplementary affidavit dated 22nd June 2005.

7. In view of the concern which was voiced by AICTE in the reply which was filed in these proceedings, this Court issued notice on 9th June 2005 to CIDCO to depute an officer before the Court to explain whether CIDCO had any objection to the establishment of the Management College on land admeasuring 0.5 acres exclusively earmarked for the aforesaid college. The Central Council for Homoeopathy, Central Council for Indian Medicine and Dental Council of India were also directed to depute officers before the Court to explain what was the requirement for the establishment of

Homoeopathic, Ayurvedic and Dental Colleges respectively and whether the Petitioners would be able to meet the requirements of the aforesaid Councils if an area admeasuring 0.5 acres was earmarked exclusively for the proposed Management College.

8. In pursuance of the notice issued by the Court, the Dental Council has appeared before the Court through Counsel while the Central Council for Indian Medicine, the Central Council for Homoeopathy and CIDCO deputed authorised representatives to appear before the Court. The representative for CIDCO has clarified before the Court that CIDCO has no objection to the utilisation of a portion of the land admeasuring 0.5 acres for the purposes of the proposed Management College and that CIDCO accordingly stands by the Land Use Certificate. The representative of CCIM has stated that the regulations of the Council require that an Ayurvedic College should have a built up area of at least 40,000 sq.ft. and a Herbal garden of one acre. In so far as the Central Council for Homoeopathy is concerned, it has been stated before the Court that there is no

requirement of any separate area of land but the Council requires that there be a specific building housing the required infrastructural facilities as prescribed by the Council. The Dental Council requires a minimum area of land admeasuring 5 acres comprising of the necessary facilities.

9. A supplementary affidavit has been filed by the Petitioners in this Court on 28th June 2005 after the representatives of the three Councils – CCIM, CCH and the Dental Council have explained the respective requirements of these regulatory authorities. In the affidavit it has been stated that (i) The Homoeopathic College has a constructed area admeasuring 46,000 sq.ft.; (ii) The Ayurvedic College has an area admeasuring of 46,000 sq.ft.; and (iii) The Dental College is situated on land admeasuring 5 acres with a constructed area of 1,61,500 sq.ft. In addition, for the Ayurvedic College, CIDCO has allotted 7 acres of land for utilisation as a Herbal garden as part of the requirement of CCIM, being Plot No.36, Sector 5, at Kharghar, Navi Mumbai. The Petitioners have annexed to their affidavit a plan

certified by the Architect depicting the area which is earmarked for the Dental College, the Ayurvedic College and the Homoeopathic College and the area which would be made available after meeting these requirements for the purposes of the proposed Management College. The details thereof are as follows :

	Institution	Land area	Covered area
-1.	Dental College.	5 acres	1,61,500 sq.ft.
-2.	Ayurvedic College	0.6 acre	46,000 sq.ft.
-3.	Homoeopathic College	0.5 acre	46,000 sq.ft.
-4.	Management College	0.5 acre	26,700 sq.ft.
-5.	Vacant plot	0.5 acre	
	Total	7.1 acres	2,80,200 sq.ft.

10. We are of the view, having considered the matter and after hearing Counsel as well as the representatives of the statutory

regulatory authorities that the cancellation of the Letter of Intent by AICTE on the ground that CIDCO as the lessor has not allowed the use of a portion of the land for a management college cannot be justified. There is no dispute about the factual position that the only ground on which the Letter of Intent was cancelled was that the lease that has been executed by CIDCO in favour of the Petitioners, authorised the Petitioners to utilise the land only for the purposes of a Dental College and for the Homoeopathic and Ayurvedic Colleges. It has not been disputed before us that the Land Use Certificate that was issued by CIDCO on 10th September 2004 formed a part of the proposal that was submitted by the Petitioners for setting up the Management Institution. CIDCO' sLand Use Certificate specifically authorises the Petitioners to conduct new courses including a Course in Business Management on the land at Kharghar, Navi Mumbai allotted to the Petitioners. AICTE, in the affidavit filed before this Court, however, states that the Land Use Certificate did not specifically mention the availability of an exclusive land area of 0.5 acres for the purposes of the Management Institution. In order to set

the matter at rest, we issued notices to CIDCO as well as to CCIM, CCH and the Dental Council. CCIM and CCH have duly recognised the Ayurvedic and Homoeopathic Colleges. CIDCO has clarified before the Court that it has no objection to the Petitioners using land admeasuring 0.5 acres for the Management Institution. AICTE had, also sought a clarification on the question as to whether the requirements of the Central Council for Indian Medicine and the Central Council for Homoeopathy would continue to be met if an area admeasuring 0.5 acres was utilised for the Management College. CCIM and CCH have stated their requirements before the Court and which have been noted in the earlier part of this judgment. The Petitioners have filed an affidavit in these proceedings, clarifying that even after meeting the requirements of CCIM, CCH and Dental Council, a demarcated area of 0.5 acres together with all infrastructural facilities is exclusively available for Management College. The case of the Petitioners is that all required infrastructure has been put into place and the requisite building complete with all amenities is available for conducting a Management College.

11. AICTE is a regulatory body established under an Act of Parliament. The establishment of Technical Institutions including Management Colleges falls within its statutory domain. We are, therefore, of the view that it would be appropriate for AICTE to have a fresh look at the matter by considering all the circumstances that have emerged before the Court. Whether the required infrastructure and amenities exist must be determined by AICTE. The Court cannot enter upon these factual determinations which must be made by the expert body that AICTE is. The ground on which the Letter of Intent came to be cancelled, however, cannot be sustained since it prima facie appears that the Petitioners do have the permission of CIDCO which had leased the land, for conducting a Management College on a portion thereof.

12. AICTE has laid down a National Calendar or schedule for processing applications for establishing new institutions for 2005-06. The National Calendar commences from 20th December 2004 with the

submission of applications. The first stage involves the verification of documents at the Regional Office, the hearing of proposals before the Hearing Committee and the issuance of Letter of Intent or letters reporting deficiencies. The second stage relates to the confirmation of preparedness by the applicant, the visit of an Expert Committee and the issuance of a letter of approval or of deficiencies. In the present case, the Letter of Intent was issued while processing the application at the first stage. The Letter of Intent, as we have held earlier, was withdrawn for reasons which cannot be sustained. In these circumstances, it would only be appropriate and proper if AICTE is directed to consider and process the application submitted by the Petitioners in accordance with law. The second stage inter alia envisages a visit by the Expert Committee and the issuance of a letter of approval or, as the case may be, of deficiencies. The last date for the completion of the second stage is 30th June 2005. AICTE having laid down a National Calendar, we are of the view that it would not be appropriate for this Court to issue a writ of Mandamus to AICTE in regard to the completion of the second stage by a particular date.

13. The last date prescribed in the National Calendar , namely, 30th June 2005 has already passed. At the same time, the present situation has arisen as a result of the withdrawal by AICTE of the Letter of Intent for reasons which this Court has not been able to sustain. Having regard to these circumstances, it would be appropriate if AICTE considers whether the application by the Petitioners for the current year, namely, 2005-06 should be processed further for this year or whether it should be deferred for the next Academic Year. This is a matter which must lie in the discretion of the expert regulatory body and we hope and trust that AICTE will arrive at its decision guided by considerations of fair and just treatment in accordance with law. In the event that AICTE comes to the conclusion that a letter of approval should be granted to the Petitioners for the year 2005-06 and if admissions for the year have not already been concluded by the Government of Maharashtra by then, AICTE can consider what appropriate directions, if any, should be issued in regard to the process of admission.

14. This petition is accordingly allowed in part in the following terms:

-(i) AICTE's communication dated 11th April 2005 (Exhibit 'G') is quashed and set aside;

-(ii) AICTE shall now consider and process the proposal submitted by the Petitioners for the grant of approval to the proposed Management College in accordance with law;

-(iii) This order shall not preclude AICTE from duly verifying the availability of infrastructure and all other facilities that must be fulfilled by a prospective applicant under its norms and regulations. AICTE will be at liberty to do so;

-(iv) AICTE will be at liberty to consider whether the proposal that has been submitted by the Petitioners for a new Management

Institution should be sanctioned so as to be operative for the year 2005-06 and to take an appropriate decision in this behalf having regard to all the facts and circumstances of the case. In the event that AICTE decides to sanction the proposal for 2005-06 and admissions for the year have not been completed by the Government of Maharashtra by then, it would be open to AICTE to give necessary consequential directions in that behalf.

15. The petition shall accordingly stand disposed of in these terms. There shall be no order as to costs.

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